

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7149

Joint Petition of KMC Data LLC and)
Hypercube, LLC, for Approval of a Transfer of)
Control)

Order entered: 3/1/2006

I. INTRODUCTION

On January 5, 2006, KMC Data LLC ("KMC") and Hypercube, LLC ("Hypercube") (together the "Petitioners"), jointly filed a Telecommunications Merger and/or Acquisition Request for Approval Form ("Application") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 107, for approval of the transfer of control of KMC to Hypercube.

On February 6, 2006, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of control because the proposed transaction would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the Application without further investigation or hearing.

The Board has reviewed the Application and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Application and accompanying documents, we hereby make the following findings of fact.

1. KMC was issued a Certificate of Public Good (CPG No. 676-CR) to provide telecommunications services in Vermont on December 19, 2001. Application at 1.

2. Pursuant to a series of transactions, KMC will become a wholly-owned subsidiary of Hypercube, a recently formed limited liability company that includes the senior management team of KMC. Application at Attachments and Exh. C.

3. Following the transaction, KMC will continue to operate under its current name and tariff. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Application at 2-3.

4. The proposed transaction will promote the public interest by enhancing KMC's financial resources and increasing its capacity to compete in the marketplace, which may in turn result in increased telecommunications competition in Vermont. Application at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. § 107. This statute conditions approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A. § 107). This standard is met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).¹ In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Application, we conclude that 30 V.S.A. § 107 applies because the transaction contemplated will result in KMC becoming a wholly-owned subsidiary of Hypercube. We further conclude that the transfer of control will not affect the services that KMC currently provides to customers in Vermont. KMC will continue to offer service at the same rates, terms and conditions. The proposed transaction will also allow KMC improved access to financial resources, which may, in turn, result in enhanced competition among providers of telecommunications services in Vermont. The resulting transfer of control, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 107 and should be approved.

1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

IV. CONCLUSIONS

The transfer of control of KMC should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 107(b).

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The transfer of control of KMC Data LLC, will promote the public good and, therefore, is approved.
2. Petitioner shall file a letter notifying the Board of the completion of the transaction within one week of such completion.

DATED at Montpelier, Vermont, this 1st day of March, 2006.

s/James Volz)	
s/David C. Coen)	
s/John D. Burke)	
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PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

Filed: March 1, 2006

Attest: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.